THE HON'BLE SRI JUSTICE T.CH.SURYA RAO
AND
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.P.NO.12764 OF 2000

DATED:25.9.2006

BETWEEN:

k.Prem kumar
and another. … Petitioners.

And

H.R.Seetharam … Respondent.

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO
AND
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.P.NO.12764 OF 2000

ORDER: (per TCSR,J)

The petitioner seeks a writ of certiorari to quash the judgment dated 7.4.2000 in L.G.C.No.19 of 1994 passed by the learned Special Court under A.P.Land Grabbing (Prohibition) Act, Hyderabad. Writ Petitioners are the respondents in L.G.C.No.19 of 1994. The sole respondent herein is the applicant.

The case of the applicant as can be seen from the statement appended to the application was that he purchased plot No.103 admeasuring 356 square yards from Jai Jawaharnagar Cooperative House Building Society, Alwal. The said plot is bounded by a 30 feet wide road on the south. The property of the respondent is situated adjacent to that road towards further south. Thus there is a 30 feet vide road separating the plot of the applicant and plot of the respondent. The respondent encroached upon 30 feet road and also encroached upon a portion of the applicant's plot No.103 and put up illegal structures thereon and thereby grabbed the southern side road to the extent of 30 feet, as well as the portion of the applicant's land to the extent of 30 feet X 20 feet. Hence, the application.

The said application was resisted by the first respondent and respondents 2 and 3 were added subsequently after the death of the

first respondent as his legal representatives. The case of the respondent was that he was the owner of the land in an extent of 13.31 guntas covered by survey No.190. There arose some disputes between him and one Buchi Reddy in respect of the said land. Buchi Reddy filed a suit in O.S.No.75 of 1966 which eventually ended in a compromise between the parties. As per the said compromise the respondent got 11 plots numbered as E-1 to E-11 in survey No.190 of Alwal village. Out of the 11 plots, the respondent sold away nine plots namely E.1 to E.9 and retained plots E.10 and E.11 for construction of a house. After obtaining necessary permission from the gram panchayat, the respondent constructed a house and mulgies in the said two plots. Whatever constructions the respondent made are only made in her plots in survey No.190 and she did not encroach into the earlier road or the plot of the applicant. In the year 1983, Jai Jawaharnagar Cooperative House Building Society, the vendor of the applicant, filed a suit O.S.No.40 of 1983 on the file of the Munsiff Magistrate, West, Hyderabad for an injunction against the respondent in respect of the application schedule property. The said suit was dismissed on 28.12.1989. When the said society, either directly or through its members were harassing the respondent, the respondent filed O.S.No.150 of 1986 on the file of the Munsiff Magistrate, West, Hyderabad against the wife of the applicant for mandatory injunction directing her to remove the illegal constructions made by her on the road. The said suit is still pending. As a counter blast the applicant filed O.S.No.236 of 1990 on the file of the same Court for injunction in respect of the application schedule property against the respondent. No temporary injunction was granted in the said suit. Having failed to get interim injunction, the applicant filed the instant application suppressing the true facts. Therefore, the application was liable to be dismissed.

On the basis of the above pleadings, the learned Special Court

framed the following issues at the time of settlement of issues:

1. Whether the petitioner is the owner of the plot of 30 feet X 20 feet in survey No.191 and road of 30 feet wide, 30 feet X 30 feet half in survey No.191 and half in Survey No.189 situated at Alwal Municipality, Malkajgiri, R.R District? If so, whether the respondent grabbed the same?
2. Whether the petitioner is entitled to re-delivery of possession as prayed for?
3. To what relief?

At the time of enquiry, four witnesses were examined on the side of the applicant besides getting marked Ex.A1 to A3 and X.1 to X.4. Three witnesses were examined on the side of the respondent apart from Ex.B1 to B.3 marked on his side besides C.1 to C.3 on the side of the Court. Appreciating the evidence adduced on either side, the learned Special Court placing reliance upon the report of the Assistant Director, Survey and Land Records, Ranga Reddy district, was of the view that the respondent illegally grabbed 39 square yards of land in plot No.103 in survey No.191 owned by the applicant and made illegal constructions thereon. Having regard to the fact that the constructions were made long back in a building in which a school was located is in existence, the Court felt that it was not appropriate to direct re-delivery of the land, instead directed the payment of compensation. Having been aggrieved by the said findings and eventual decision, the respondents filed the instant writ petition as aforesaid.

The sole respondent although served, chose not to appear before this Court. Despite the fact that his name stands printed in the cause list, none appeared for him.

We have heard the arguments of the learned counsel for the writ petitioners and perused the judgment passed by the learned Special Court, which is now being impugned. After having given our anxious

considerations to the facts and the evidence adduced on either side, we are of the considered view that it is fairly a case where the learned Special Court glaringly missed the point in controversy between the parties inter se. It is the straight case of the applicant/respondent that he purchased plot No.103 admeasuring 356 square yards from Jai Jawaharnagar Cooperative House building Society. The description of the property has been given in the schedule appended to the application. That plot is obviously bounded on the southern side by a road and towards further south of that road, according to the applicant, plot of the respondent is situated.

It is a clear case of the applicant that there exists a road on the southern side of the applicant's plot and the respondent after having encroached upon the road encroached into a part of his property. As against this, the case of the respondent seems to be that pursuant to the compromise between himself and one Buchi Reddy, he got 11 plots numbered as E.1 to E.11 in survey No.190 of Alwal village out of which he sold away 9 plots namely E.1 to E.9 and retained plots E.10 and E.11 for himself and constructed a house thereon after having obtained the necessary permission from the Alwal Gram Panchayat. From the pleadings it is obvious that the applicant purchased a plot from the society and the respondent got a plot from another society. Both the societies prepared layouts, divided the properties into various plots and obtained necessary permission from the concerned authorities. Having regard to these facts, there is no point in verifying the tippan as well as village map, so as to locate the survey No.191 and Survey No.190 of Alwal village. The land covered by these survey numbers have been divided into various plots pursuant to the approved layout and plots have been allotted to the individual members of the society. If at all any clarification is needed so as to resolve the disputes between the parties inter se, the verification that is

required in the first instance is of the two lay out plans prepared, one by Jai Jawaharnagar Cooperative House Building Society and the other by the Buchi Reddy, and then if need be the tippans, village map etc., can be verified so as to see that both the layouts are within the survey Nos.191 and 190, or exceeded the same. The Commissioners appointed in this regard obviously did not do so. They verified the village map, tippan and eventually reached the conclusions that there was an encroachment. They did not even bother to see the existence of the road in between the plot of the applicant and the plot of the respondent. These are the glaring defects that are emanating from the record inherently. Apart from this, as long back as in the year 1983 Jai Jawaharnagar Cooperative House Building Society filed a suit against the respondent in respect of application schedule mentioned property for perpetual injunction. That suit admittedly ended in dismissal. The significance of the judgment has not been considered by the learned Special Court. When the Society lost the suit which is the vendor of the applicant, the applicant cannot now contrary to the findings given in the said suit lay a claim against the respondent on the premise that he encroached upon the part of the land of the society. No plea of *res judicata* or *estoppel* has been taken, no doubt, by the respondent. But admittedly the Society filed the suit for injunction and lost the suit. In that view of the matter, it is not open to the applicant to contend that the respondent encroached upon the road as well as part of his plot. The eventual conclusions reached by the learned Special Court placing reliance upon the two reports of the Commissioners, who missed the real controversy between the parties and who failed to locate the two plots with reference to the approved lay outs, would obviously erroneous.

The way in which issue No.1 was framed is an indicia that the real controversy is lost sight of. The petitioner cannot claim 1/5th over

the road to the extent of 30 feet X 30 feet. Neither the petitioner nor the applicant claim an inch over the road. It may be mentioned here that it was the case of the respondent that the applicant encroached upon a part of the road. The existence or non-existence of the road has not been appropriately considered by the two Commissioners and even by the Special Court. Even the Special Court, inter alia, in para-27 of its judgment observed that neither the first Commissioner nor the second Commissioner showed any road in their plans in between the applicant's plot and the respondent's plot and in the case on hand there had been no reliable evidence as to exactly through which survey number the alleged southern side road passed and where it ended. Without deciding the existence of the road we are afraid that it is not reasonably possible to conclude that there has been an encroachment.

The allegations fall short of the requisite act of land grabbing. It is only the act of land grabbing that gives jurisdiction to the Special Court. If it is a case of mere encroachment of the land falling short of the act of land grabbing, the very jurisdiction of the Special Court is not attracted. These crucial aspects have not been considered by the Special Court. Having regard to the fact that the respondent remained ex parte here, it is not expedient in the interest of justice to remit the matter to the Special Court.

We are of the considered opinion, for the above reasons, that the impugned judgment suffers from the vice of illegality in having failed to touch upon the real controversy between the parties ignoring the significance of judgment in O.S.No.40 of 1983 and the respective pleas of the parties and hence, it cannot be sustained. Obviously, two suits have been filed by the parties subsequently, and the result of those two suits are not known. Undoubtedly, the result would resolve the actual controversy between the parties inter se. In the wake of that it cannot be said that it is a case of grabbing of the land.

In the result, the writ petition is allowed and the impugned judgment is hereby set aside.

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